WAGON ENGINEERING SDN. BHD.

v.

SULAIMAN BULOH SEMENANJUNG ENTERPRISE SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAACOB J
[CIVIL SUIT NO. C23-2918-86]
1 JULY 1988

CIVIL PROCEDURE: *Appeal against summary judgment - Order 14 and O. 18 r. 19 RHC - Whether can proceed under both - Whether triable issues involved - Goods sold and delivered - Purchase order signed by a non employee or director of defendant - Delay in summary judgment application.*

This was an appeal by the defendant against an order made by the Senior Assistant Registrar in an O. 14 application. The plaintiff sold and delivered to the defendant 5 units of cement tanks at an agreed price of RM322,500. The plaintiff alleges that the defendant had breached their agreement in the purchase order by failing to settle the sum due under the order. The defendant contends that one En. Kamaruddin who signed the purchase order had no authority to act on behalf of the defendant, as he (Kamaruddin) was not even an employee or a director of the defendant, a fact known to the plaintiff.

Held:

[1] The plaintiff should stated categorically under which Order or Rule of the Rules of the High Court that it is proceeding with, so as to give the defendant due notice of the nature of the application to enable it to direct its mind as to the issues that are really in dispute.

[2] since there are disputed facts disclosed in the affidavits and issues raised at the hearing, it is not a proper case for which either O. 14 or O. 18 r. 19 can apply.

[3] the application for summary judgment was made after pleadings had closed and 9 months after statement of defence had been filed and served on the plaintiff. The plaintiff has not, in any of its affidavits, explained the cause of the delay.

[Appeal allowed with costs.]

Legislation referred to:
Rules of the High Court 1980, O. 14, O. 18 r. 19

For the defendant/appellant - Abdul Ghani Abdullah
For the plaintiff/respondent - S.S. Ludher

JUDGMENT

Siti Norma Yaacob J:

In this suit, the plaintiff succeeded in obtaining summary judgment under O. 14 before the Senior Assistant Registrar and dissatisfied with this order, the defendant appealed to me.

The application that was before the Senior Assistant Registrar is worded in such a way that it may will be construed to be an O. 18 r. 19 application to have the statement of defence struck off or alternatively an O. 14 application for summary judgment for the sums claimed in the statement of claim or both.

Out the outset, I need to point out that it is very important that the plaintiff should state categorically under which Order or Rule of the Rules of the High Court that it is proceeding with, so as to give the defendant due notice of the nature of the application to enable it to direct its mind as to the issues that are really in dispute. The plaintiff should elect whether it wished to proceed under O. 18 r. 19 or under O. 14, but it cannot proceed on both.

In this suit the application was filed 9 moths after the statement of defence was filed and 3 months after the Summons for Directors were given and under such circumstances, I considered that the most appropriate application should have been under O. 18 r. 19 but since resort to O. 14 is also pleaded in the alternative and considering that the hearing before me was in the nature of a rehearing, I had likewise proceeded to deal with the application in the alternative and heard submissions on both O. 18 r. 19 and O. 14.

The cause of action in this suit is founded on a purchase order No. 2054 dated 5 March 1985 issued by the plaintiff wherein the defendant had acknowledged that it was purchasing 5 units of cement tanks from the plaintiff at the agreed price of RM322,500. The plaintiff now alleges that the defendant had breached their agreement in the purchase order by failing to settle the sum due under the order.

The main issue raised by the defendant is the capacity of one Kamaruddin bin Dato' Shamsuddin, to act on its behalf as the latter had signed on the purchase order.

The position of Kamaruddin is quite unique. He was not an employee or director of the defendant company at the material time but was the General Manager of National Car Rental, a subsidiary of Emastulin Automobile Sdn. Bhd., the controlling company. The defendant is another of Emastulin's subsidiary. In this capacity as the general manager of National Car Rental, Kamaruddin had attended and participated in the defendant's Board meeting on 23 May 1985 and another Board meeting of another subsidiary company of Emastulin held on 8 July 1985. It was at the Board meeting on 23 March 1985 that the decision to purchase the 5 units of cement tanks was taken, but the decision was reviewed 4 months later at the second meeting held on 8 July 1985 when the Board cancelled the decision to purchase following the market conditions then prevailing.

From the documentary evidence it becomes clear that the purchase order was signed before the decision to purchase was made and after the decision was cancelled, Kamaruddin must have failed to communicate this fact to the plaintiff as it claims that it only became aware of it upon receipt of a letter dated 5 March 1986 from Emastulin informing it of the cancellation.

Kamaruddin's authority becomes an issue especially when the plaintiff has pleaded in para. 4 of its statement of claim that all negotiations for the purchase was done through one Syed Abdul Rahman, the general manager of Emastulin, but the purchase order was instead signed by Kamaruddin who was not even an employee or a director of the defendant, who had clothed him with the necessary authority resulting in the signing of the purchase order.

Quite apart from the issue of Kamaruddin's authority, the defendant also questioned the plaintiff's delay in filing the instant application. From the proceeding, it is clear that the application was made after pleadings had closed and 9 months after the statement of defence had been filed and served on the plaintiff. The plaintiff has not, in any of its affidavits, explained the cause of the delay. The plaintiff had retained the same firm of solicitors throughout and this makes it all the more incumbent that the proceedings should not be allowed to drag until it had reached the trial stage before the solicitors decide to file the instant application.

Since there are disputed facts disclosed in the affidavits and issues raised at the hearing, I have decided that this was not a proper case for which either O. 14 or O. 18 r. 19 can apply. To that end, I had set aside the Senior Assistant Registrar's order allowed the appeal with costs.

Also found at [1988] 2 CLJ 861